

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

| | | |
|----------------------------|---|-----------------------|
| In re: |) | Chapter 9 |
| |) | |
| CITY OF DETROIT, MICHIGAN, |) | Case No. 13-53846 |
| |) | |
| Debtor. |) | Hon. Steven W. Rhodes |
| _____ |) | |

**OBJECTION OF THE UNITED STATES OF AMERICA TO FOURTH
AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF
THE CITY OF DETROIT**

The United States of America, on behalf of the Environmental Protection Agency (“EPA”) and the United States Department of Housing and Urban Development (“HUD”), among others, hereby objects to the Fourth Amended Plan for the Adjustment of Debts of the City of Detroit (the “Plan”) (Docket No. 4392).

BACKGROUND

The EPA is charged with the police and regulatory responsibility to protect the public health and the environment under several environmental statutes, including the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

Pursuant to various Contracts for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974 (“Loan Guarantee Contracts”), as amended, 42 U.S.C. § 5308 *et seq.* (the “Act”), by and between the Debtor, as borrower, and the Secretary of HUD, as guarantor, HUD agreed, pursuant to section 108

of the Act and 24 C.F.R. Part 570, to guarantee the payment of variable/fixed rate notes issued by the Debtor. As security for HUD's guarantees, the Debtor pledged, among other things, all allocations or grants made to it, or for which it may become eligible, under section 106 of the Act, as well as any grants which were or may become available to it pursuant to section 108(q) of the Act. The aggregate amount of unpaid principal and interest on the Loan Guarantee Contracts is \$111,959,163.90.¹

PLAN OBJECTIONS

I. Discharge and Release and Injunction Provisions

The United States has requested the Debtor include in any order confirming the Plan a carve out of certain of its rights that it believes are not subject to discharge under 11 U.S.C. § 944 or can otherwise be released or enjoined by the Plan's terms, including, but not limited to, liabilities not within the definition of a claim under 11 U.S.C. § 101(5) or arising after confirmation, certain liabilities arising under environmental laws (such as liabilities as an owner or operator of property after confirmation, *see, e.g., In re CMC Heartland Partners*, 966 F.2d 1143 (7th Cir. 1992)), setoff and recoupment claims, and actions enforcing police and regulatory powers. The United States has provided the Debtor with specific carve out language but has not yet received a response and files this Objection to preserve its right to contest the scope of the Plan's discharge and release and injunction provisions.

¹ HUD intends to file proofs of claim for this aggregate amount by the June 3, 2014 governmental unit bar date.

II. Allowed Amount of HUD's Claim

The Plan provides that HUD holds an unimpaired, secured claim in the aggregate amount of \$90,075,004. *Plan* at 29. HUD disputes this amount and believes the aggregate amount of unpaid principal and interest on the Loan Guarantee Contracts is \$111,959,163.90, as stated above. HUD has provided the Debtor with this amount as well as the supporting evidence for it and discussions between the Debtor and HUD are ongoing. To date, however, the Debtor has not yet agreed with HUD's figure, and HUD therefore files this Objection to preserve its right to contest the claim amount stated in the Plan.

CONCLUSION

For the reasons stated above, the United States objects to confirmation of the Plan. The United States will continue to negotiate with the Debtor to resolve its objections but hereby expressly reserves the right to supplement this Objection at a later date.

Dated: May 12, 2014

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General
Civil Division

BARBARA L. MCQUADE
United States Attorney

J. CHRISTOPHER KOHN
Director

/s/ Matthew J. Troy
TRACY J. WHITAKER
JOHN T. STEMPLEWICZ
MATTHEW J. TROY
Attorneys, Civil Division
U.S. Department of Justice

P.O. Box 875
Ben Franklin Station
Washington, DC 20044
Tel: (202) 514-9038
Fax: (202) 514-9163
Tracy.whitaker@usdoj.gov
John.Stemplewicz@usdoj.gov
Matthew.Troy@usdoj.gov

ROBERT G. DREHER
Acting Assistant Attorney General

/s/ Alan S. Tenenbaum
ALAN S. TENENBAUM
ROBERT DARNELL
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Tel: (202) 514-5409
Alan.Tenenbaum@usdoj.gov

CERTIFICATE OF SERVICE

I, Matthew J. Troy, hereby certify that the service of this Objection of the United States of America to Fourth Amended Plan for the Adjustment of Debts of the City of Detroit was filed and served via the Court's electronic case filing and noticing system on May 12, 2014.

/s/ Matthew J. Troy